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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/916,611	07/27/2001	Greg Volgas	HCC-011 (306*142)	8709

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CONNOLLY BOVE LODGE & HUTZ, LLP  
P O BOX 2207  
WILMINGTON, DE 19899

EXAMINER

PRYOR, ALTON NATHANIEL

ART UNIT PAPER NUMBER

1616

DATE MAILED: 12/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/916,611

Applicant(s)

VOLGAS ET AL.

Examiner

Alton N. Pryor

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on 21 September 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☐ Claim(s) 1,3-28,30-39,41-48,50-65,68,69,71,72 and 82-95 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1,3-18,20-28,30-39,41-48,50-56,68,69,71,72 and 86-95 is/are rejected.
- 7) ☐ Claim(s) 19,57-65,72 and 82-85 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

### DETAILED ACTION

Applicant's arguments filed 9/21/05 have been fully considered but they are not persuasive. See arguments below.

I. Rejections of claims 1,3-18,20-28,30-39,41-48,50-56,68,69,71,72,86-91 as being obvious over AF 300 from Nufarm MSDS, Infosafe No. NU003 will be maintained for reason on record and reason as follows. New claims 92-95 are added to this rejection.

Applicant argues:

- a) Declaration of Johnnie Roberts executed 7/22/05, which establishes that AF 300 herbicide does not fully dissolve said chlorinated carboxylic acid herbicide (2,4-D) in the surfactant as required by the applicant's claim.
- b) 2,4-D is not fully solubolized in kerosene; whereas, full solubolization of the herbicide is a primary characteristic of the applicant's invention.
- c) Claim 1 is further distinguished because it uses transitional phrase "consisting essentially of". Kerosene has "toxicity rating" between 2-3. At this toxicity rating, a substance causes burns and is dangerous to the eye, skin and respiratory systems of mammals. Kerosene is flammable, poses inhalation hazard, has an objectionable odor, and causes deterioration of spray application equipment.
- d) Kerosene is often described as an "inert ingredient" in herbicide.
- e) February 3, 2003 MSDS for AF 300 herbicide has replaced the kerosene with Solvesso 1500 to avoid toxicity.

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- f) Johnnie Roberts' declaration executed 2/3/05, 7/22/05, 8/29/05, and 9/19/05 addressing kerosene characteristics such as inertness, odor, flammability, toxicity, deteriorative, and shipping problems must be given patentable weight.
- g) Dependent claims requiring at least about 50% surfactant are allowable.

Examiner argues:

- a) Johnny Roberts declaration signed 7/22/05 discloses that stirring 2,4-D in kerosene at 70 degree C results in 2,4-D being fully solubilized. Note that the claims do not specify a temperature limitation for dissolving 2,4-D in a solvent. Therefore, any temperature at which 2,4-D dissolves in kerosene reads on the claims.
- b) 2,4-D is fully solubilized in kerosene. See Examiner's section a).
- c) "Consisting essentially of" language employed by the claims does not exclude kerosene from the claims. AF 300 is a composition comprising kerosene and 2,4-D. The claims are directed to fully solubilizing 2,4-D in a solvent. Robert's declaration of 7/22/05 clearly points out at 70 degree C 2,4-D is fully solubilized in kerosene. Therefore, Roberts makes it clear that kerosene can fully dissolve 2,4-D, which meets the limitation of the instant claims. "Consisting essentially of" language as written in instant claims would eliminate a components that would not allow 2,4-D to be soluble under any condition. This is not true of kerosene. Note applicant does not provide temperature limitation in instant claims; therefore any

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temperature at which 2,4-D becomes soluble in kerosene would read on instant claims. Characteristics of kerosene such as inertness, odor, flammability, toxicity, deteriorative, shipping problems as discussed in Roberts declarations signed 2/3/05, 7/22/05, 8/29/05, and 9/19/05 do not address the objective of the instant claim. The claim is to the solubility of 2,4-D in kerosene of AF 300, and again, Roberts' declaration clearly illustrate that 2,4-D is fully soluble in kerosene at 70 degree C.

- d) See Examiner's section c) regarding kerosene as an inert ingredient.
- e) See Examiner's section c) regarding kerosene as being toxic.
- f) Regarding declarations see section c).
- g) Applicant does not show unexpected results for composition comprising at least 50 % surfactant or 70 to about 80% by wt surfactant. Note that AF 300 discloses 48.75% surfactant, which is almost at least about 50% surfactant. Since at least about 50% is close to 48.75% applicant must show the criticality of at least about 50%. In fact, where the prior art teaches all of the limitations except the amount of an ingredient, applicant must show the criticality of the amount of that ingredient.
- h) Previous rejections were argued and discussed in previous office actions at the appropriate. Examiner will not raise previously addressed issues in this rejection.

II. Objection to claims 19,57-65,72 and 82-85 is maintained for reason on record.

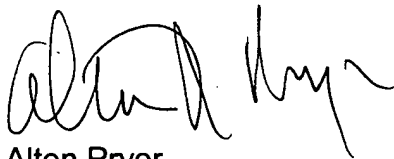
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***Telephonic Inquiry***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alton N. Pryor whose telephone number is 571-272-0621. The examiner can normally be reached on 8:00 a.m. - 4:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Alton Pryor', is written above the printed name.

Alton Pryor  
Primary Examiner  
AU 1616